



ARIZONA TRANSACTION PRIVILEGE TAX PROCEDURE TPP 04-2

Janet Napolitano
Governor

J. Elliott Hibbs
Director

Procedure for Requesting Refunds Under
Laws 2004, Chapter 309, 46th Legislature,
Second Regular Session

ISSUE:

This procedure provides guidance to taxpayers requesting a refund of transaction privilege taxes paid that is available under the retroactive provision enacted under Senate Bill 1293 during the 2004 legislative session.

Chapter 309

SB 1293

Transaction privilege tax deduction for prime contractors for the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a prime contracting contract. **Retroactive to tax periods from and after October 17, 1969.** The aggregate amount of tax refunds is limited to \$100,000.

APPLICABLE LAW:

General

Arizona Revised Statutes (A.R.S.) § 42-1118 provides for the issuance of a credit or refund when any amount of tax, penalty, or interest has been paid in excess of the amount actually due. The statute enumerates the different forms in which a refund may be issued. In addition, the statute specifically delineates what information is to be included in a refund request.

A.R.S. § 42-1104(A) provides a four-year limitation period for the Department to assess additional tax due.

A.R.S. § 42-1106 provides that a claim for credit or refund may be submitted to the Department subject to the four-year limitation period of A.R.S. § 42-1104.

A.R.S. § 42-1108(A) provides that if the Department is not satisfied with payment of any tax required to be paid, the Department may examine any return within the four-year limitation period established in A.R.S. § 42-1104.

A.R.S. § 42-1119 provides that if the Department disallows any claim for refund it shall notify the taxpayer of the denial. The Department's action on the claim is final unless the

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taxpayer appeals to the Department in writing within the time and in the manner prescribed by statute.

Specific

Section 2 of Laws 2004, Chapter 309, 46th Legislature, effective August 25, 2004, provides for the retroactive application of the amendment of A.R.S. § 42-5075(J). The session law provides that any refund claim based on the retroactive application of this section shall be submitted to the Department on or before December 31, 2004. A failure to file a claim on or before December 31, 2004, constitutes a waiver of the claim for refund. The burden is on the taxpayer to establish by competent evidence the amount of tax paid for all taxable periods and the amount attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract. The Department shall:

1. Review all timely filed claims.
2. Determine, on audit if necessary, the correct amount of each claim.
3. Notify the taxpayer of its determination. The notice is final unless a taxpayer appeals in the manner provided in A.R.S. § 42-1119.

The Department shall not make a refund until after a final determination has been made as to the amount of all refund claims filed under this section. If a taxpayer appeals the Department's determination, the Department, in compliance with confidentiality statutes, may notify other taxpayers who have filed claims as to the nature of any delay and, if possible, to estimate the probable extent of the delay.

The aggregate amount of the tax refund under this section shall not exceed \$100,000. If the aggregate amount of claims under this section that are ultimately determined to be correct exceeds \$100,000, each claim shall be proportionately reduced so that the total refund amount equals \$100,000.

Interest shall not be computed or allowed on any refundable amount if paid on or before June 30, 2005. Nevertheless, if the amount cannot be determined or paid until after June 30, 2005, interest shall accrue thereafter.

DISCUSSION:

The transaction privilege tax is a tax imposed on the privilege of conducting business in the State of Arizona. This tax is levied on the vendor, not the purchaser. The vendor may pass the burden of the tax on to the purchaser; however, the vendor is ultimately liable to Arizona for the tax. Therefore, only the vendor may request a refund of tax.

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Under A.R.S. § 42-1118, the Department must refund taxes “paid in excess of the amount actually due.”

Requests for refunds may be generated due to legislative action. Each year, the Legislature enacts new tax provisions into law. During the 2004 legislative session, the retroactive exemption provision was enacted, amending the transaction privilege and use tax statutes. This new provision provides for the credit or refund of taxes paid on gross receipts no longer subject to tax.

A refund is available for tax periods beginning with the specific retroactive date of the provision through the effective date of the legislation, subject to the provisions of **A.R.S. § 42-1106, *Time limitations for credit and refund claims*** and **A.R.S. § 42-1104, *Statutes of limitation; exceptions***. Sections 42-1104 and 42-1106, read together, provide that a credit or refund claim must be filed by the taxpayer with the Department “within four years after the report or return is required to be filed or within four years after the report or return is filed, whichever period expires later.”

In addition to this procedure, the Department will be issuing a Transaction Privilege Tax Ruling that defines “direct costs” for purposes of identifying that portion of gross proceeds of sales or gross income not subject to transaction privilege tax under the prime contracting classification as provided by A.R.S. § 42-5075(J). This proposed ruling is currently out for public comment. Please refer to the Department’s website at www.revenue.state.az.us to review and/or comment on the proposed ruling.

PROCEDURE:

Send requests for refunds under the retroactive provisions enacted by Senate Bill 1293 to the address below:

Refund Desk
Transaction Privilege & Use Tax Audit
SB 1293
Arizona Department of Revenue
1600 W. Monroe
Phoenix, Arizona 85007

A claim for refund must be in writing and must identify the claimant by name, address, and tax identification number. In addition, each claim shall include the amount of refund requested, the specific tax periods involved, and the specific grounds on which the claim is founded. It is the taxpayer’s burden to establish by competent evidence the amount of tax paid for all taxable periods and the amount, if any, attributable to gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services incorporated into a contract qualifying for the exemption.

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An Amended Transaction Privilege Tax Return is used when filing for a refund. The taxpayer or the taxpayer's authorized representative shall sign the amended return. Claims for refund are subject to the provisions of **A.R.S. § 42-1106, *Time limitations for credit and refund claims*** and **A.R.S. § 42-1104, *Statutes of limitation; exceptions*** which state that a credit or refund claim must be filed by the taxpayer with the Department within four years after the report or return was originally required to be filed or within four years after the report or return was filed, whichever period expires later.

If filing for multiple periods, the taxpayer should submit the written request to the Transaction Privilege and Use Tax Refund Section *before* filing amended returns. The Refund Desk will review the request and contact the taxpayer with further instructions to accommodate amended return filings for multiple periods.

The Department shall not make a refund until after a final determination has been made as to the amount of all refund claims filed under this section. If a taxpayer appeals the Department's determination, the Department, in compliance with confidentiality statutes, may notify other taxpayers who have filed claims as to the nature of any delay and, if possible, to estimate the probable extent of the delay. No refund will be issued until all disputed claims are resolved. All taxpayers requesting a refund will have their claim held pending all administrative protest processes and until a final decision(s) is made in court.

Under A.R.S. § 42-1108(A), if the Department is not satisfied with a return, the Department may examine the return, including any books, papers, records or memoranda relating to the return. This includes an Amended Transaction Privilege Tax Return. All information relating to a refund is subject to verification by the Department.

Gale Garriott, Deputy Director
for J. Elliott Hibbs, Director

Signed: September 1, 2004

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.